



CITY OF HAYWARD

AGENDA REPORT

Planning Commission
Meeting Date 5/20/99
Agenda Item 2

TO: Planning Commission

FROM: Dyana Anderly, AICP, Development Review Services Administrator

SUBJECT: Use Permit Application No. 99-160-07 - Ivo Ascani (Applicant/Owner): Request to re-establish a large group home for twenty clients. The property is located at 22240 Montgomery Street, east side, in the Medium Density Residential (RM) zoning district and extends through to Pearce Street in the Central City - Commercial (CC-C - SD3) subdistrict and special design district.

RECOMMENDATION

It is recommended that the Planning Commission approve the use permit application subject to the attached findings and conditions of approval.

DISCUSSION

Background

In 1991, the applicant, Mr. Ascani, obtained approval from the Board of Adjustments to operate a residential care facility for twenty elderly clients. The Board granted approval for two years, with up to three annual renewals by staff (five years total) if no complaints were received. During that five-year period, staff did not receive complaints. However, in late 1998, it came to staff's attention, via an inquiry from a neighboring property owner, that the facility was still operating and that the clients were no longer elderly but mentally disabled. Subsequently, the group home operator and the property owner were notified that the use permit for the group home had expired and that approval of a new use permit would be necessary to allow the group home to continue to operate.

There have been several notable changes since the Board's action in 1991.

- The Americans With Disabilities Act ("ADA") became effective on July 26, 1992, which includes a national mandate for the elimination of discrimination against individuals with disabilities. All local government entities, including cities, counties, housing authorities, redevelopment agencies, and other similar agencies, as well as private enterprises, are subject to its provisions. Interpretations of disabilities at the federal level have been determined through court cases. A disability includes addiction to legal substances, whether alcohol or another drug, and certain mental or psychological conditions, such as retardation or schizophrenia. Because federal (and State) law prohibits distinguishing between elderly clients and other groups with disabilities, the group home operator was not obliged to report the change in clientele to the City nor to anyone.

- In 1994 the North Hayward Neighborhood Plan was adopted, which raised issues pertaining to social services in that neighborhood. The Plan includes a policy statement that states, "Provide more oversight and equitable distribution of transitional housing, half-way housing and drop-in socialization and recovery centers." Supporting documentation in the Plan states that the North Hayward neighborhood "is getting more than its share of residential facilities."
- The zoning of the property changed from Commercial Office in front and General Commercial in the rear to RM in the front and CC-C along Pearce Street. As with the previous zoning designation of the property, large group homes are allowed in these zoning districts, subject to approval of a conditional use permit.

Property Description

In 1991, the facility was converted from a dental office to a 20-bed residential care facility. No further changes are proposed to the building or the property. As designed, the building is not conducive to conversion to a single-family or an apartment or condominium, which would require multiple kitchens. Its appearance is somewhat commercial given its original purpose as a dental office, however the current RM zoning no longer permits an office use.

The property is a "through parcel," with the building and a driveway oriented toward Montgomery Street. A parking lot, with more than an adequate number of parking stalls for a group home, is oriented toward Pearce Street. The only change that staff recommends is for the applicant to paint the brown trash/storage structure situated at the edge of the parking to match the color of the gray fence. Well maintained mature landscaping softens the visual impact of the parking lot on Pearce Street. Montgomery Street in the vicinity of the group home is predominantly a mixture of single- and multi-family developments. Properties fronting on Pearce Street are primarily small cottages on the west side of the street and businesses on the east side.

Major Issues

The appropriateness of the large group home on Montgomery Street, like boarding homes, convalescent homes, or other institutional uses, must be assessed in terms of its ability to satisfy the findings necessary to approve a use permit, which are:

1. Would the group home be desirable for the public convenience or welfare?

According to Ombudsman, Inc., (Citizens Serving Long Term Care Residents, Alameda County) and the staff of the California Community Care Licensing Department, there is an increase in the demand for group homes in Alameda County. This is true both locally and nationwide. In 1977 there were 11,008 group homes nationwide, and in 1994 there were 64,564 group homes nationwide. Many individuals with disabilities live at home with elderly parents or are forced to choose between limited opportunities for congregate settings and homelessness. Still others remain in inappropriate institutional settings because there are no group homes or affordable housing available in the community. As

the number of persons served in large institutions has decreased, the population in group homes has increased.

2. Would the group home impair the character and integrity of the neighborhood?

The physical structure is already in place, so use of the building for a large group home will not have a visual impact on the neighborhood. Further, there are other large residential structures in the area housing multiple households. The parking requirement is exceeded, so vehicles associated with the use will not impact the neighborhood.

At some point a group care facility might be so large as to appear to be an institutional use rather than a home. Would a group home for twenty individuals be contrary to the principle of providing housing for adults with mental disabilities within a neighborhood setting? From a land use standpoint, an institution is not necessarily a negative connotation since convalescent homes, rest homes, hospitals and similar institutions are also permitted in the Medium Density Residential District when a use permit has been approved for them. The fair housing laws focus on allowing persons with disabilities to live in normal residential settings rather than institutions; however, courts have required cities to allow facilities as large as forty residents (excluding staff) in multi-family and commercial zones (apartments and condominiums).

Some individuals have expressed concern that group homes in neighborhoods contribute to the loss of property value. According to James Fennel, General Manager of the California Real Estate Appraisers Board (San Jose), the presence of small numbers of physically well maintained group homes in neighborhoods would not necessarily result in a lower appraisal of a single-family home. However, if a group home is not well maintained and has a history of problems associated with it, then the appraisal value of adjacent homes is negatively impacted. He likens the loss of value as comparable to homes situated next to multi-family developments. The group home at issue is as well maintained as any in the neighborhood. The operator of the home indicates that she is willing to meet with interested neighbors to describe her operation and encourages neighbors to call her if they have issues, just as they might any other neighbor.

3. Would the group home be detrimental to the public health, safety, or general welfare?

Some Hayward residents have said they feel unsafe with group home residents in their neighborhoods. It is possible that this feeling can be attributed, at least in part, to the occasional appearance of emergency vehicles at group homes. Generally in such instances officers are responding to calls regarding "missing adults" or "missing juveniles" or for assistance with mentally disturbed residents. For the group home at issue, there were several calls for police services from a client who was mentally disturbed and who called 911 for imagined afflictions. The group home operator has been sensitive to this matter and has arranged with the Police Department to call her before responding to 911 calls from the group home. There is no evidence that the presence of the home in the neighborhood constitutes a threat to the public.

4. Is the group home in harmony with applicable City policies and the intent and purpose of the RM and CC-C zoning districts? This includes consistency with adopted City policies, including the Housing Element and the North Hayward Neighborhood Plan.

Housing Element. The Housing Element includes a policy that states, "promote equal access to housing by enforcing fair housing laws." The Fair Housing Amendments Act, the California Fair Employment and Housing Act, and the ADA prohibit discriminating in any fashion against housing opportunities for persons with disabilities, which they define to include the mentally disabled, recovering substance abusers, abused children, and persons with AIDS and HIV. Under the Fair Housing Amendments Act and the California Fair Housing Act, local agencies have a duty to make "reasonable accommodations" for housing for persons with disabilities. To do otherwise constitutes discrimination.

The North Hayward Neighborhood Plan adopted in 1994 includes a policy that states, "Provide more oversight and equitable distribution of transitional housing, half-way housing and drop-in socialization and recovery centers." Supporting documentation in the Neighborhood Plan states that the North Hayward neighborhood "is getting more than its share of residential facilities." This home was operating at the time the Plan was adopted. Since that time, the Second Chance drop-in center at Mission and Sunset has closed.

Including the subject group home, the North Hayward Neighborhood has seven group homes. In the vicinity of subject group home, there are two large facilities for the elderly: the Bethesda group homes at A Street and Montgomery, and Montgomery Manor at Montgomery and Sunset. These homes have operated for many years. There is one small group home for up to six adults on Smalley Avenue about 700 feet from the subject group home. The Zoning Ordinance currently contains no separation requirement between group homes, but a proposed amendment to the Ordinance suggests a 500-foot separation between large group homes. This is about the distance of a city block. There are no large group homes within 500 feet of subject group home. State laws require a 300-foot separation between licensed group homes absent certain circumstances. There are no other such homes in within 300 feet.

The purpose of the RM District is to "*promote and encourage a suitable environment for family life in areas where a compatible mingling of single-family and multiple-family dwellings is possible.*" Locating a group home in a residential setting is consistent with the intent of the State law to locate group homes in a neighborhood setting in order that the clients may be assimilated into the neighborhood. The parking lot for the group home is situated in the CC-C District. Parking lots are necessary for businesses in and near the downtown.

Conclusion

Staff believes that findings can be made to support continuing the proposed large group home at its current location. When reviewing this application, the Planning Commission should keep in mind that any decision to limit group homes for persons with disabilities must comply with State and federal fair housing laws, and may not be based on discriminatory factors. Denial or approval of the application must be based on land use impacts of the application and

supported by appropriate findings. For example, while the Planning Commission might deny a use permit for a large group home because the integrity of the surrounding area would be impaired (finding B), this finding must NOT be based on allegations that the clients themselves, due to their disabilities, would impair the area or that the inexperience of the staff of the group home would result in impairing the integrity of the surrounding area.

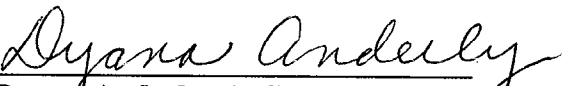
Environmental Review

The project is exempt from further environmental review as a negative declaration for a similar project was approved in 1991.

Public Hearing Notice

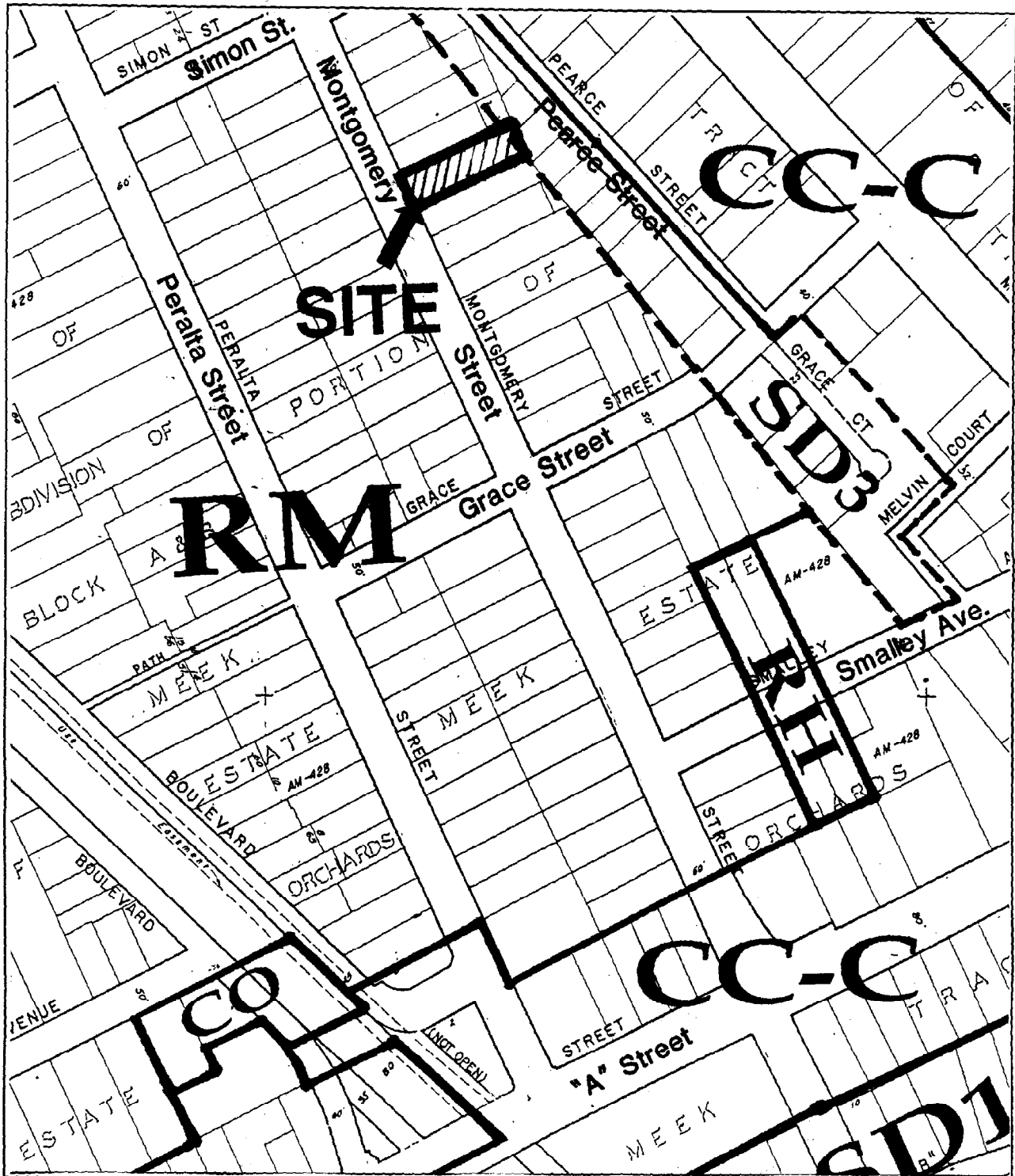
During the initial referral process when the application was first received, staff received several comments from area residents. One verbal comment was that the area already suffers from prostitution and drugs and that the group home would exacerbate the situation. Another commented that mentally ill people have been seen in the vicinity and that there is inadequate supervision of them. Another objected via e-mail (copy attached). On May 7, 1999, a Notice of Public Hearing was mailed to every property owner and resident within 300 feet of the property as noted on the latest assessor's records, and to former members of the North Hayward Task Force.

Prepared by:


Dyana Anderly, AICP, Development/Review Services Administrator

Exhibits:

- A. Area/Zoning Map
- B. Findings for Approval of Use Permit 99-160-07
- C. Conditions of Approval of Use Permit 99-160-07
- D. Neighbor's e-mail dated March 5, 1999
- E. Site Plan



ZONING/AREA MAP ■ UP 99-160-07

Ivo Ascani (Appl.)

Mr. and Mrs. Ivo Ascani (Owner)

22240 Montgomery Street

FINDINGS FOR APPROVAL
Use Permit Application 99-160-07
Large Group Home
22240 Montgomery Street

- A. The large group home for up to twenty clients would be desirable for the public convenience or welfare in that there is a need for additional group homes in Alameda County.
- B. The large group home would not impair the character and integrity of the neighborhood in that the physical structure is already in place, so use of the building for a large group home will not have a visual impact on the neighborhood. Further, there are other large residential structures in the area housing multiple households. The parking requirement is exceeded, so vehicles associated with the use will not impact the neighborhood.
- C. The large group home would not be detrimental to the public health, safety, or general welfare in that the facility is licensed by the State of California as being acceptable for operating a large group home, and the Fire Marshal and Building Official find that the structure is adequate to accommodate a large group home.
- D. The large group home is in harmony with applicable City policies and the intent and purpose of the RM and CC-C zoning districts in that, per the Housing Element, it promotes equal access to housing by the disabled, and per the State of California Community Care Licensing Department, the large group home does not result in over-concentration based on the distance between the proposed group home and other group homes in the area; the closest being about 700 feet.

**CONDITIONS OF APPROVAL
Use Permit Application 99-160-07
Large Group Home
22240 Montgomery Street**

1. Use Permit Application No. 90-160-07 for a State-licensed group home with a maximum of twenty residents is approved subject to the specific conditions listed below.
2. By July 1, 1999, the shed located at the edge of the parking area shall be painted to match the fence it abuts.
3. The owners of the property shall maintain in good repair all building exteriors, fences, landscaping, sheds, driveways, parking areas, irrigation, paving, lighting and drainage improvements. Landscaping shall be maintained in a weed- condition at all times with replacement plants provided where necessary. Required street and parking lot trees that are severely topped or pruned shall be immediately replaced, as determined by the City Landscape Architect.
4. As a good neighbor gesture, the group home operator shall provide a telephone number to neighbors who request it in order to maintain a means of communication.
5. Lighting shall reflect away from adjacent properties.
6. All applicable requirements of the City's Security Ordinance shall be met.
7. Employees shall be encouraged to park in the parking lot off Pearce Street.
8. Violation of conditions is cause for revocation of this permit application at a public hearing before the duly authorized review body.

EXHIBIT D

From: "Sherry Fischer" <mzsherry@earthlink.net>
To: COHD.CED(DyanaA)
Date: Fri, Mar 5, 1999 3:57 PM
Subject: group home use permit

I recieved in the mail today your notice of the request for a use permit for a 16 bed group home to be located at 22240 Montgomery St. Hayward

What type "group home" will this be? I feel that our saturation point has been reached in this area and really do not feel that any increase in the density in this area is appropriate. We already have numerous residential care facilities in the area and many multiple home lots as well as apartments. As a 25 yr resident of this area I would like to see it remain basically a single family residential area. I dont feel that we have the needed street parking to accomadate either the persons residing or visiting a sixteen bed facility. I would appreciate any information your could provide me with about this proposed facility.

Thank you,

Sherry & Doug Fischer